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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,218	02/27/2002	Boris Sebastian Heinrich Schneider	SCHNEIDER B-1 (CIP)	6200

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COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, NY 11576-1696

EXAMINER

ROSENBERG, LAURA B

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 10/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/091,218

Applicant(s)

SCHNEIDER, BORIS SEBASTIAN
HEINRICH

Examiner

Laura B Rosenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/415,790.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: since the foreign reference (DE 43 15 824) was changed on the IDS to account for an incorrect document of the reference number, it should also be changed in the specification (page 5). Appropriate correction is required.

Information Disclosure Statement

2. The examiner has not considered the foreign reference (42 15 824) that was improperly documented in the IDS of Paper No.4, in lieu of the updated foreign reference (43 15 824) submitted with the IDS of Paper No.5.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "automatically locked" approximately horizontally extending support of claim 3, the bows disposed on a strut of claim 4, and the "snap bolt" and "rotary drop lock" of claims 5 and 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 4 is objected to because of the following informalities: "said canopy guard" should be changed to --said roof or canopy guard-- so that the terminology is consistent with the independent claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 3-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the specification does not explain or support the "automatically locked" approximately horizontally extending support of claim 3. In addition, the drawings and the specification show the bows being attached to the approximately horizontally extending support by what appears to be bolts, while claim 3 claims that the bows "are disposed on said strut (2) by means of an inclined hinge fastening". Further, the specification provides not explanation or support for figure 2 and claims 7 and 8.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitations "the driver" in line 3 and "said canopy" in line 8; claim 8 recites the limitation "all 2 leg canopy guards" in line 2. There is insufficient antecedent basis for these limitations in the claims.

In claim 3, line 3, "said strut" is unclear because there is more than one strut that this feature could be referring to.

In claim 8, the examiner is unsure of what the applicant is claiming. Clarification is needed for this claim. The examiner would like to remind the applicant the currently claimed invention appears to have 4 "legs" (front and rear struts). Thus, a 2-leg canopy guard seems contradictory to the claimed invention. No new matter should be added.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bright (2,682,427). In regards to claim 1, Bright discloses a retaining device (#64) for a "public utility vehicle" (#20) for protecting a driver from falling out of the vehicle due to centrifugal forces, the device being attached to a roof guard (#47) having front (#26) and rear (#50) struts and being open on its sides, the device comprising an

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approximately horizontally extending support (#74) dividing the opening of the roof guard (best seen in figure 2) and being pivoted on the front strut (#26) on a hinge (#57-59, 61, 63, 66) and retained on the rear strut (#50) by means of a locking system (#87, 89, 90, 91, 96, 98). Bright discloses the support being pivoted on the front strut and retained on the rear strut, rather than the support being pivoted on the rear strut and retained on the front strut. However, it would have been obvious to one skilled in the art at the time that the invention was made to modify the retaining device of Bright such that it comprised a pivoting on the rear strut and a locking system on the front strut as claimed since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

In regards to claim 2, Bright discloses two "bows" (formed by #62, 72, 80, 86) attached to and extending spaced apart from the support (best seen in figure 2).

In regards to claim 3, Bright discloses the support (#64) being "automatically locked" (via locking system) and the "bows" (formed by #62, 72, 80, 86) being disposed on a strut (#26) by means of an "inclined hinge fastening" (#57-59, 61, 63, 66).

In regards to claim 4, Bright discloses the hinge projecting into the side opening of the roof guard when the device is installed (best seen in figure 2).

In regards to claim 6, Bright discloses the locking system (#87, 89, 90, 91, 96, 98) comprising a "rotary drop lock" (best seen in solid/dotted lines of #96 in figure 1).

In regards to claim 7, Bright discloses the device holding a driver/operator in 3 points: a shoulder point, a knee point, and a hip point, when the device is installed

(thought not specifically disclosed, the figures show that these 3 points of a driver/operator would be held by the retaining device).

In regards to claim 8, as best understood, Bright discloses a general system for roof guards based on seat reference point as a coordinate system.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bright (2,682,427) in view of Martin, Jr. (4,392,669). In regards to claim 5, Bright does not disclose the locking system comprising a "snap bolt". Martin, Jr. teaches a retaining device (#41) for a vehicle (#10) for protecting a driver from falling out of the vehicle. The retaining device is retained on a strut (#31) of a roof guard (#34) by means of a locking system (#53, 54), in particular a "snap bolt" (best seen in figure 2). It would have been obvious to one skilled in the art at the time that the invention was made to modify the locking system of Bright such that it comprised a "snap bolt" as claimed in view of the teachings of Martin, Jr. so as to provide a commercially available (Martin, Jr.: column 3, lines 41-44) and inexpensive locking system. In addition, the use of "snap bolts" is old and well known in the art; therefore, it would have been an obvious matter of design choice to use a "snap bolt" in the locking system instead of a "rotary drop lock".

12. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welborn (5,529,369). In regards to claim 1, Welborn discloses a retaining device (#26) for a "public utility vehicle" (#10) for protecting a driver from falling out of the

vehicle due to centrifugal forces, the device being attached to a roof guard (#18) having front (#20) and rear (#34) struts and being open on its sides, the device comprising an approximately horizontally extending support (#52) dividing the opening of the roof guard (best seen in figure 1) and being pivoted on the front strut (#20) on a hinge (#30) and retained on the rear strut (#34) by means of a locking system (#40). Welborn discloses the support being pivoted on the front strut and retained on the rear strut, rather than the support being pivoted on the rear strut and retained on the front strut. However, it would have been obvious to one skilled in the art at the time that the invention was made to modify the retaining device of Welborn such that it comprised a pivoting on the rear strut and a locking system on the front strut as claimed since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

In regards to claim 2, Welborn discloses two "bows" (#46, 48) attached to and extending spaced apart from the support (best seen in figure 2).

In regards to claim 3, Welborn discloses the support (#26) being "automatically locked" (via #40) and the "bows" (#46, 48) being disposed on a strut (#20) by means of an "inclined hinge fastening" (#28, 32).

In regards to claim 4, Welborn discloses the hinge projecting into the side opening of the roof guard when the device is installed (best seen in figure 1).

In regards to claim 6, Welborn discloses the locking system (#40 comprising a "rotary drop lock" (best seen in figures 3-7).

In regards to claim 7, Welborn discloses the device holding a driver/operator in 3 points: a shoulder point, a knee point, and a hip point, when the device is installed (based on the location of a seat #22 in figure 1, the device would hold a driver/operator in these 3 points).

In regards to claim 8, as best understood, Welborn discloses a general system for roof guards based on seat reference point as a coordinate system.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Welborn (5,529,369) in view of Martin, Jr. (4,392,669). In regards to claim 5, Welborn does not disclose the locking system comprising a "snap bolt". Martin, Jr. teaches a retaining device (#41) for a vehicle (#10) for protecting a driver from falling out of the vehicle. The retaining device is retained on a strut (#31) of a roof guard (#34) by means of a locking system (#53, 54), in particular a "snap bolt" (best seen in figure 2). It would have been obvious to one skilled in the art at the time that the invention was made to modify the locking system of Welborn such that it comprised a "snap bolt" as claimed in view of the teachings of Martin, Jr. so as to provide a commercially available (Martin, Jr.: column 3, lines 41-44) and inexpensive locking system. In addition, the use of "snap bolts" is old and well known in the art; therefore, it would have been an obvious matter of design choice to use a "snap bolt" in the locking system instead of a "rotary drop lock".

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mason et al., Lynnes et al., Klee et al., Spicher, Chance, Welborn, Miller et al., Neufeld et al., and Meinhardt disclose vehicle retaining devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B Rosenberg whose telephone number is (703) 305-3135. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Laura B. Rosenberg
LBR

Paul N. Dickson 9/29/03
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